IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO. 5559 OF 2007

Balaji Mandir Trust & ors.... Petitioner

versus

Nitin Jagtap & anr..... Respondent.

Shri Girish Godbole for the petitioner.
Shri N.P.Deshpande for respondent no.1.
Shri R.G.Ketkar for the respondent no.2..

CORAM; A.P. DESHPANDE, J.
DATED; 10TH OCTOBER, 2007

P.C.;

1. Rule. Rule made returnable forthwith. Taken up for final hearing by consent of parties.

2. By the present petition, the original plaintiff viz. the trust and trustees of Balaji Mandir trust are taking exception to the impugned order passed below Exh.20 in regular Civil Suit No. 937/07 allowing an application moved by the respondent no.1 purportedly under Order 1 Rule 8-A of Civil Procedure Code. Order 1 Rule 8-A reads thus:

> "Power of court to permit a person or body of persons to present opinion or to take part in the proceedings:- While trying a suit, the

> court may, if satisfied that a person or body of persons is interested in any question of law which is directly and substantially in issue in the suit and that it is necessary in the public interest to allow that person or body of persons to present his or its opinion on that question of law, permit that person or body of persons to present such opinion and to take such part in the proceedings of the suit as the Court may specify."

Thus for allowing an application moved under Rule 8-A the following ingredients must be satisfied:

i) That there exists a question of law which is directly and substantially in issue in the suit.

ii) That a person or body of persons is interested in the said question of law.

iii) That it is necessary in public interest to allow that person or body of persons to present his or its opinion on that question of law.

The court, while considering the application under Order 1 Rule 8-A need to make an enquiry touching the

above ingredients.

3. The Plaintiff's suit is for declaration that the action on the part of the respondent Corporation in refusing plinth checking certificate so also issuing notice directing the petitioners to stop the construction, is illegal. The main relief in the suit pertains to a declaration that the conditions imposed by the Corporation in the commencement certificate are illegal, null and void and not binding on the plaintiff. In the said suit the Corporation has filed written statement and has opposed the claim in the suit.

4. The respondent no.1 herein moved an application under Order 1 Rule 8-A of CPC and in the application, it is averred that he is an elected Corporator of the Pune Municipal Corporation and is the President of 'Brastchar Virodhi Gandhigiri Janandolan'. It is then stated that the respondent no.1 had made complaint to Pune Municipal Corporation and pointed out the irregularities committed by the plaintiff and acting on the same the Corporation has issued necessary orders. It is then stated that "However this Applicant has gone through the written statement filed by the defendant and it is submitted that the said written statement has failed to point out legal

question in the present matter. In fact Corporation has not followed legal norms while sanctioning the plan so also the Defendant deliberately failed to point out the legal aspect for which the suit can be defeated. Therefore as a member of the Pune Municipal Corporation and as a citizen of Pune City this applicant intent to take part in the Court proceeding and intent to point out legal questions as a interested person." It is obvious that a person or body of persons can be permitted to express its view on the question of law, if the same is found to be in public interest by the court. Personal interest in the subject matter of the suit is not the requirement of Order 1 Rule 8-A. The application moved by the respondent no.1 goes to highlight the complaint made by him to the Corporation and consequential action taken by the Corporation against the plaintiff. The purpose of Order 1 Rule 8-A is to enable the court to seek opinion of a person or body of persons touching the question of law if the same is found to be in public interest. Perusal of the application moved by respondent no.1 does not reveal that the application, on the own showing of the respondent no.1, satisfy the requirement of Rule 8-A. Perusal of the impugned order reveals that the court has not addressed itself to the requirement of Rule 8-A but goes to consider the application, generally observing that the

respondent no.1 has levelled corruption charges against all officers of the Corporation including the the City Engineer, Deputy City Engineer, Assistant Engineer etc. It is then observed by the trial court that the said corruption charges can form part of evidence if the applicant proves the same. Rule 8-A does not postulate lis between the parties to the suit and the third party who makes an application, whereas the observations of the trial court indicate that it carries an opinion that the allegations of corruption levelled by the respondent no.1 against the officers of the Corporation, can be proved in the suit. The impugned order further observes that the plaintiff has not followed various provisions of the B.P.T. Act and in the same way the defendants have not following the provisions of the B.P.T. Act, while sanctioning the development plan submitted by the plaintiff to its office. The said findings are wholly irrelevant for the purposes of consideration of an application moved under Order 1 Rule 8-A. Proceeding on the incorrect line of reasoning, the trial court has allowed the application. Just because some Corporator has made a complaint to the Corporation about some construction being illegal, that by itself does not vest the Corporator with a right to present his opinion under Order 1 Rule 8-A. Personal interest,either in favour of some party or against it, is not a criteria

relevant for Order 1 Rule 8-A. The impugned order does not stop there but further goes to permit the respondent no.1 to file his say and written statement in the suit. As pointed out hereinabove, the person who is permitted to present his opinion under Order 1 Rule 8-A is not expected to contest the suit on merit. Permitting the respondent no.1 to file written statement, would unnecessarily create a lis between the original plaintiff and the party moving an application under Rule 8-A. At the most in exercise of power under Rule 8-A, the court can permit a party to present its opinion on a question of law. and a limited participation in the proceedings for that purpose. Thus direction no.2 in the operative part of the order is clearly in violation of the letter and spirit of Order 1 Rule 8-A. The order impugned thus is unsustainable in law being patently illegal and hence it deserves to be quashed and set aside. In the result the impugned order is quashed and set aside. Application filed by respondent no.1 under Order 1 Rule 8-A stands rejected. Rule made absolute in the above terms.

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